IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1978

NO. 78- 821

LUCIUS HOLLOWAY, SR., et al.,

Appellants,

vs.

BETTY E. WISE, etc., et al.,

Appellees.

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA

JURISDICTIONAL STATEMENT

CHRISTOPHER COATES
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NEIL BRADLEY
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ATTORNEYS FOR APPELLANTS

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES..... iii

JURISDICTIONAL STATEMENT..... 2

OPINION BELOW..... 2

JURISDICTION..... 2

STATUTORY PROVISIONS INVOLVED..... 4

QUESTION PRESENTED..... 4

STATEMENT OF THE CASE..... 5

THE QUESTION IS SUBSTANTIAL..... 11

I. REVIEW IS REQUIRED BECAUSE THE RULING OF THE DISTRICT COURT AND THE HOLDING IN PITTS V. BUSBEE, 511 F.2d 126 (5TH CIR. 1975), UPON WHICH THE DISTRICT COURT RELIED, IN IN CONFLICT WITH THE RULING IN CITY OF PETERSBURG, VIRGINIA V. UNITED STATES, 354 F.SUPP. 1021 (D.D.C. 1972)(3-JUDGE COURT), AFF'D, 410 U.S. 962 (1973). ..11

II. THE CONGRESSIONAL PURPOSE UNDERLYING THE VOTING RIGHTS ACT OF 1965 IS NOT FURTHERED BY THE BROAD EFFECT ATTRIBUTED BY THE DISTRICT COURT TO THE OBJECTION OF THE ATTORNEY GENERAL.....15

Page

III. THE LEGAL EFFECT ATTRIBUTED BY THE DISTRICT COURT TO THE OBJECTION BY THE ATTORNEY GENERAL IMPOSES THE GREATEST POSSIBLE DISRUPTION OF LOCAL ELECTIONS UNDER THE VOTING RIGHTS ACT OF 1965. 17

CONCLUSION.....19

TABLE OF AUTHORITIES

Cases — Page(s)

Allen v. State Board of Elections, 393 U.S. 544 (1969)....4, 7, 17

Citizens Committee, Etc. v. City of Lynchburg, Va., 528 F.2d 816 (4th Cir. 1975), application for stay denied, 423 U.S. 1043 (1976).....14, 15

City of Petersburg, Virginia v. United States, 354 F.Supp. 1021 (D.D.C. 1972)(3-judge court), aff'd, 410 U.S. 962 (1973).....11, 12, 13, 14

City of Richmond, Virginia v. United States, 422 U.S. 358 (1975).....13, 14

Holloway v. Raines, Civ. No. 76-27 (M.D.Ga. 1977)..... 5

Horry Cty. v. United States, 449 F.Supp. 990 (D.D.C. 1978)..... 7

Pitts v. Busbee, 511 F.2d 126 (5th Cir. 1975).....10, 11, 12

Pullum v. Greene, 396 F.2d 251 (5th Cir. 1968)..... 6

State of South Carolina v. Katzenbach, 383 U.S. 301 (1966).....15

United States v. Bd. of Com'rs of Sheffield, Ala., ___U.S.___, 98 S.Ct. 965 (1978).....18

Page(s)

United States v. Georgia, Civ. No. 12972 (N.D.Ga. 1969) (3-judge court)..... 8

United States v. Georgia, 351 F.Supp. 444 (N.D.Ga. 1972) (3-judge court), aff'd, Georgia v. United States, 411 U.S. 526 (1973)..... 16, 18

United States v. Georgia, Civ. No. 76-1531A (N.D.Ga., Sept. 30, 1977)(3-judge court), aff'd, ___U.S.___, 98 S.Ct. 2840 (1978)..... 7

United States v. Matthews, Civ. No. 516 (M.D.Ga. 1964)..... 5

United States v. Raines, 362 U.S. 17 (1960), on remand, 189 F.Supp. 121 (M.D.Ga. 1960)..... 5

Constitutional Provisions

First Amendment..... 2
Thirteenth Amendment..... 2
Fourteenth Amendment..... 2
Fifteenth Amendment..... 2

Article VIII, §V, ¶1 of the 1945 Constitution of the State of Georgia..... 6
Article VIII, §V, ¶2 of the 1945 Constitution of the State of Georgia..... 6
Article VIII, §VI, ¶1 of the 1945 Constitution of the State of Georgia..... 6

Page(s)

Article VIII, §VI, ¶2 of the 1945 Constitution of the State of Georgia..... 6

Statutes

28 U.S.C. §1253 4
28 U.S.C. §1331..... 2
28 U.S.C. §1343..... 2
28 U.S.C. §2201..... 2
28 U.S.C. §2281..... 2
42 U.S.C. §1971..... 2
42 U.S.C. §1973c [§5 of the Voting Rights Act of 1965].....passim
42 U.S.C. §1983..... 2

Ga. Code §34-1015..... 7
Ga. Code §34-1513..... 7
Georgia Laws 1965, p. 746.....passim

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1978

NO. 78-

LUCIUS HOLLOWAY, SR. and
LAWRENCE GREENE, individually
and on behalf of all others
similarly situated; and the
TERRELL COUNTY VOTERS
LEAGUE,

Appellants,

v.

BETTY E. WISE, individually and
in her official capacity as Judge
of the Probate Court for Terrell
County; WALTER STALLWORTH, WES
WESTON, HUGH LEE, RONALD
FERGUSON, and COLIN RAINEY,
individually and in their official
capacities as members of the Terrell
County Board of Education; and RICHARD
C. BARRY, individually and in his
official capacity as the Terrell
County School Superintendent,

Appellees.

JURISDICTIONAL STATEMENT

Appellants appeal from the order of the United States District Court for the Middle District of Georgia, sitting as a court of three judges, entered on July 21, 1978, which held that Georgia Laws 1965, p. 746 is unenforceable in its entirety because the Attorney General, pursuant to §5 of the Voting Rights Act of 1965, had interposed an objection to a portion of the state law.

OPINION BELOW

The opinion of the United States District Court for the Middle District of Georgia dated July 21, 1978 is unreported and is appended hereto at 1a.

JURISDICTION

This action was brought under the First, Thirteenth, Fourteenth and Fifteenth Amendments of the Constitution of the United States and the following provisions of the United States Code: 28 U.S.C. §§1331, 1343(3) and (4), 2201, 2281 and 2284; and 42 U.S.C. §§1971, 1973 and 1983.

Plaintiffs filed this action on October 19, 1976, and filed an amended complaint on May 9, 1977, to enforce §5 of the Voting Rights Act of 1965, in the selection of members of the Terrell County, Georgia, Board of Education.[1] A statutory three-judge district court was convened and it held on July 21, 1978 that Georgia Laws 1965, p. 746 was unenforceable in its entirety because the Attorney General of the United States,

1. Plaintiffs , who are individual black registered voters of Terrell County and an unincorporated association of black registered voters of Terrell County, also sought declaratory and injunctive relief against the use of at-large elections for the members of the Board of Education and the Terrell County Board of Commissioners on grounds that such election schemes unconstitutionally diluted black voting strength. After the July 21, 1978 order of the district court, plaintiffs' dilution claim against the election scheme for the Board of Education was rendered moot. Plaintiffs' dilution claim challenging the election scheme for the Board of Commissioners was heard by a single-judge court on October 24 and 25, 1978, and disposition of that claim is still pending. Furthermore, plaintiffs raised other claims under §5 of the Voting Rights Act of 1965 before the three-judge court, but no other §5 issue is raised in this appeal other than the one arising under Georgia Laws 1965, p. 746.

pursuant to §5, had interposed an objection to a feature of the state law. Notice of appeal was filed on August 21, 1978 and is appended hereto at 9a.

The jurisdiction of this Court to review this decision on direct appeal is conferred by 28 U.S.C. §1253 and 42 U.S.C. §1973c. Allen v. State Board of Elections, 393 U.S. 544 (1969).

STATUTORY PROVISIONS INVOLVED

This appeal presents a question as to whether an objection to a feature of a state law by the Attorney General, pursuant to §5, renders the state election law unenforceable in its entirety. The validity of the state law is not otherwise at issue in this appeal. The state law, Georgia Laws 1965, p. 746 and 42 U.S.C. §1973c are appended hereto at 15a and 11a respectively.

QUESTION PRESENTED

I. Whether an objection by the Attorney General of the United States, pursuant to §5 of the Voting Rights Act of 1965, to a portion of a state law that effected a change in election standards, practices or procedures, but where the Attorney General precleared all other changes in election

standards, practices or procedures found in the same state law, renders the state law unenforceable in its entirety?

STATEMENT OF THE CASE

Terrell County is a majority black jurisdiction[1] located in rural southwest Georgia. The right of black people to register and vote in this jurisdiction has been the subject of extensive federal litigation.[2]

1. According to the 1970 Census of Population, there are 11,416 persons residing there, of which 6,793 (59.5%) are black persons and 4,616 (40.4%) are white persons.

2. See United States v. Raines, 362 U.S. 17 (1960), on remand, 189 F.Supp. 121 (M.D. Ga. 1960)(finding racially discriminatory practices by the Terrell County Board of Registrars); United States v. Matthews, Civ. No. 516 (M.D.Ga. 1964) (where various local officials in Terrell County entered into a consent decree enjoining them from intimidation and coercion of persons attempting to register Negroes); and Holloway v. Raines, Civ. No. 76-27 (M.D.Ga. 1977), pending, order of the court of November 29, 1977, enjoining the use of a numbered post requirement in Dawson, Georgia's councilmanic elections for failure to comply with §5. Dawson is the county seat of Terrell County, and in Holloway v. Raines, supra, plaintiffs have also challenged Dawson's at-large councilmanic elections on dilution grounds.

Under Georgia law, boards of education are composed of five members selected by the county grand jury[1] and the county school superintendent is elected by the voters. These selection methods can only be changed by local constitutional amendments ratified by referendum.[2] Terrell County did so by Georgia Laws 1965, p. 746.

Regarding the Board of Education, Georgia Laws 1965, p. 746:

(1) provided for at-large elections of the Board members instead of appointment by the grand jury;

(2) increased the membership of the Board from five to seven members;

(3) required that five of the seven members qualify from residential districts and provided for a system of staggered terms;

1. The right of Negroes to serve on the Terrell County Grand Jury has also been the subject of federal litigation. See Pullum v. Greene, 396 F.2d 251 (5th Cir. 1968)(finding a total exclusion of black persons from grand and traverse jury service until 1966).

2. Article VIII, §V, ¶1; Article VIII, §V, ¶2; Article VIII, §VI, ¶1; and Article VIII, §VI, ¶2 of the 1945 Constitution of the State of Georgia. These procedures were re-enacted in the 1976 Constitution of the State of Georgia.

(4) provided for the selection of the chairman of the Board by its members in lieu of appointment by the grand jury;

(5) provided for the filling of vacancies on the Board by the remaining members as opposed to appointment by the grand jury; and

(6) required that elections for members of the Board be held in compliance with the requirements of state law.[1]

Regarding the Terrell County School Superintendent, Georgia Laws 1965, p. 746 provided that this official be appointed by the members of the Board instead of elected by the voters.

There is no question that the election changes found in Georgia Laws 1965, p. 746 were covered by §5;[2] and that they were used

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1. Among these state law practices are statewide numbered post and majority vote requirement, pursuant to Ga. Code §§34-1015 and 34-1513. See United States v. Georgia, Civ. No. 76-1531A (N. D.Ga. September 30, 1977) (3-judge court), aff'd, __U.S. __, 98 S.Ct. 2840 (1978).

2. See Allen v. State Board of Elections, 393 U.S. 544, 569-70 (1969) (change from elective to appointee position covered); and Horry Cty. v. United States, 449 F.Supp. 990 (D.D.C. 1978) (three-judge court) (change from appointee to elective position covered).

beginning with the general election in 1968 and continuing until after this lawsuit was filed and enforcement was enjoined by the district court.

After the filing of this lawsuit, appellees, by a letter of October 19, 1977, submitted Georgia Laws 1965, p. 746 to the Attorney General, as required by §5. The Attorney General, by letter of December 16, 1977, 22a, objected to the "method of election" for the Board of Education, but precleared all other changes in election standards, practices or procedures found in the 1965 local constitutional amendment.[1]

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1. The Attorney General noted, inter alia, the total absence in the jurisdiction of any black elected officials and racially polarized voting. 25a. The evidence in the district court further showed that the dual school system in Terrell County was not dismantled until 1970-71 by the order of the court in United States v. Georgia, Civ. No. 12972 (N.D.Ga. 1969) (3-judge court). By the 1977-78 school year, black students constituted approximately 91% of those students attending the public schools of Terrell County. (Defendants' Answer to Plaintiffs' Request for Admissions No. 84, filed February 9, 1978). Nevertheless, prior to the order of the district court, no black person had ever served as a member of the Terrell County Board of Education or as its School Superintendent. (Defendant Board of Commissioners' answer to Plaintiffs' Request for Admissions No. 1, filed Sept. 25, 1978). In 1978 neither the white Board members nor the School Superintendent had children attending the Terrell

(Footnote continued on next page)

Appellants then moved for injunctive relief creating a single-member district plan for use in the election of members of the Board of Education so as to cure the objection of the Attorney General. Like appellants, appellees also contended before the district court that the unobjectionable portions of Georgia Laws 1965, p. 746 were fully enforceable. (Brief of Appellees, pp. 10, 11 and Reply Brief of Appellees, pp. 3, 6-7) Contrary to the position of the appellants, however, appellees contended that the objections of the Attorney General should be cured by use of a numbered post scheme with the retention of at-large elections. (Id.)

(Footnote continued from preceding page)
County public schools. (Defendants' answer to Plaintiffs' Request for Admissions No. 85, filed on February 9, 1978). There were Board members who had children attending an all-white private academy. (Dep. Laviner, pp. 9, 26)

Rejecting the contentions of the parties, and in reliance upon Pitts v. Busbee, 511 F.2d 126 (5th Cir. 1975), the district court ruled that the Attorney General's objection to the "method of election" provided by Georgia Laws 1965, p. 746 rendered the local constitutional amendment unenforceable in its entirety. Thus, the district court ordered that the selection of the members of the Board of Education be returned to the grand jury and that the selection of the Terrell County School Superintendent be returned to popular election.

On August 21, 1978, appellants filed this notice of appeal from the July 21, 1978 order of the district court. Appellants' motion for an extension of time to docket this appeal until November 17, 1978 was granted by Mr. Justice Powell on October 11, 1978.

THE QUESTION IS SUBSTANTIAL

I. REVIEW IS REQUIRED BECAUSE THE RULING OF THE DISTRICT COURT AND THE HOLDING IN PITTS V. BUSBEE, 511 F.2d 126 (5TH CIR. 1975), UPON WHICH THE DISTRICT COURT RELIED, IS IN CONFLICT WITH THE RULING IN CITY OF PETERSBURG, VIRGINIA V. UNITED STATES, 354 F.SUPP. 1021 (D.D.C. 1972)(3-JUDGE COURT), AFF'D, 410 U.S. 962 (1973).

The issue presented is whether or not the district court was correct in ruling that the Attorney General's objection to one part of the statute rendered the whole statute unenforceable. The district court held that the panel decision of the United States Court of Appeals for the Fifth Circuit in Pitts v. Busbee, 511 F.2d 126 (5th Cir. 1975) was controlling.

In Pitts, the court of appeals addressed the issue of what effect a selective objection by the Attorney General had on the unobjectionable changes found in the state law. The court stated that:

> The effect of the Attorney General's objections was to prevent the effectiveness of

> the 1973-74 Acts, from the beginning and entirely. Id., 511 F.2d at 128.

Both the ruling of the district court here and the ruling in Pitts are in conflict with this Court's summary affirmance in City of Petersburg, Virginia v. United States, 354 F.Supp. 1021 (D.D.C. 1972) (three-judge court), aff'd, 410 U.S. 962 (1973).

In Petersburg, the Attorney General objected to an annexation pursuant to §5 but in effect stated that his objection would be withdrawn if a single-member district plan were implemented. The municipality then filed an action in the District of Columbia seeking a declaration that its annexation had no racially discriminatory purpose or effect. The district court held that:

> [i]n accordance with the Attorney General's findings, . . .this annexation can be approved only on the condition that modifications calculated to neutralize to the extent possible any adverse effect upon the political participation of black voters are adopted, i.e., that the plaintiff shift from an at-large to a ward system of electing city councilmen. Id., 354 F.Supp. at 1031.

The district court thereupon entered an order requiring the city to submit an election scheme which complied with the Voting Rights Act of 1965. Id. 354 F.Supp. at 1031; City of Richmond, Virginia v. United States, 422 U.S. 358, 370 (1975).[1] This Court summarily affirmed the ruling of the district court. 410 U.S. 962 (1973).

Subsequently, in City of Richmond, Virginia v. United States, 422 U.S. 358 (1975), this Court elaborated upon its summary affirmance in Petersburg.

> Petersburg was correctly decided. On the facts there presented, the annexation of an area with a white majority, combined with at-large councilmanic elections and racial voting, created or enhanced the power of the white majority to exclude Negroes totally from participation in the governing of the city through membership on the city council. We agreed, however, that the consequence would be satisfactorily obviated if at-large elections were replaced by a ward system of choosing councilmen. It is our view that a fairly designed ward plan in such circumstances would not only prevent the total exclusion of Negroes from membership on the council but would afford them representation reasonably equivalent to their political strength in the enlarged community. Id., 422 U.S. at 370.

Accord, Citizens Committee, Etc. v. City of Lynchburg, Va., 528 F.2d 816, 818 (4th Cir. 1975), application for stay denied, 423 U.S. 1043 (1976).

The all or nothing approach of the district court is squarely in conflict with the principle developed in Petersburg, Richmond, and Lynchburg. Had the reasoning of the district court been applied in those cases, the administrative and/or judicial objections would have simply ended the matter and the municipal annexations would have been unenforceable in their entirety. The fact that this Court has refused to give either judicial or administrative objections under §5 this effect demonstrates that the decision of the district court should be reviewed.

1. The remedy ordered by the district court in Petersburg, i.e., a single-member district plan, was the very type of remedy sought by the appellants before the district court, supra, p. 9.

II. THE CONGRESSIONAL PURPOSE UNDERLYING THE VOTING RIGHTS ACT OF 1965 IS NOT FURTHERED BY THE BROAD EFFECT ATTRIBUTED BY THE DISTRICT COURT TO THE OBJECTION OF THE ATTORNEY GENERAL.

The Voting Rights Act of 1965 was enacted with the specific purpose of eradicating racially discriminatory voting practices. State of South Carolina v. Katzenbach, 383 U.S. 301, 308 (1966). Once the use of an objectionable standard, practice or procedure is enjoined and a nondiscriminatory alternative is substituted by either local officials or the district court, the Congressional purpose underlying the Voting Rights Act has been effectuated. As stated in Citizens Committee, Etc. v. City of Lynchburg, 528 F.2d 816, 818 (4th Cir. 1976):

> We perceive no sound reasons why state and local laws cannot be amended to devise a ward system for the 1976 councilmanic elections that will meet the requirements of the Act. . . . it appears that both the city and federal interests can be fully preserved if the annexation becomes effective according to state law and the state complies with federal constitutional and statutory provisions protecting the right to vote.

The Congressional purpose was effectuated when the Attorney General objected to that portion of Georgia Laws 1965, p. 746 which he was "unable to conclude. . . will not have a discriminatory effect." 26a.[1] The Attorney General did not find any of its other aspects objectionable under §5. Therefore, since the remaining standards, practices and procedures of Georgia Laws 1965, p. 746 were not found to have a racially discriminatory purpose or effect, the Congressional purpose underlying the Voting Rights Act does not require that their use be enjoined. The district court erred in so ruling.

1. This manner of phrasing §5 objections was specifically approved in Georgia v. United States, 411 U.S. 526, 530, 538-39 (1973).

III. THE LEGAL EFFECT ATTRIBUTED BY THE DISTRICT COURT TO THE OBJECTION BY THE ATTORNEY GENERAL IMPOSES THE GREATEST POSSIBLE DISRUPTION OF LOCAL ELECTIONS UNDER THE VOTING RIGHTS ACT OF 1965.

Georgia Laws 1965, p. 746 was both enacted by the Georgia General Assembly and approved by the voters of Terrell County in a referendum election, 15a. All of its changes in election standards, practices and procedures, excepting its "method of election" for members of the Board of Education, have been submitted to the Attorney General and received §5 preclearance. The broad ranging ruling of the district court denied to local officials the right to implement these unobjectionable election changes. Though §5 preclearance requirements are "in some aspects a severe procedure," Allen v. State Board of Elections, 393 U.S. 544, 556 (1969), they are certainly not intended to impose needless disruption upon the local democratic process. However, the ruling of the district court imposes

the greatest possible disruption.[1]

Moreover, the application of the ruling of the district court to other situations could entirely disrupt state and local elections. For example, if a state legislature of a covered jurisdiction were to enact a new election code with one hundred separate changes, an objection to a single change in the new code, under the ruling of the district court, would

1. In other appeals before this Court, the Attorney General has objected to selective changes in voting standards, practices or procedures but not to other such changes found in the same state enactment. See, e.g., United States v. Georgia, 351 F.Supp. 444, 445 (N.D.Ga. 1972)(three-judge court), aff'd, Georgia v. United States, 411 U.S. 526 (1973)(objections by the Attorney General to portions of the state reapportionment plans) and United States v. Bd. of Comm'rs of Sheffield, Ala., ___U.S.___, 98 S.Ct. 965, 971 (1978) (objection by the Attorney General to the at-large method of electing city councilmen but to none of the other changes in the state enactment). Though the issue of what effect the Attorney General's selective objection had on the remaining portion of the state law was not specifically addressed in either United States v. Georgia, supra, or Sheffield, neither of the rulings of the district courts there nor the disposition of those appeals by this Court indicate in any way that local officials must return to the prior election scheme because of the objection of the Attorney General to a portion of the state law.

invalidate the state's entire election scheme. It is not difficult to imagine the enormous disruption such application of the law would create.

CONCLUSION

Plenary review is merited because the issue of what effect an objection by the Attorney General, pursuant to §5, has on the precleared portions of a state law is vitally important to enforcement of the Voting Rights Act. Furthermore, with the exception of cases involving objections to corporate annexations, this Court has never given the district courts or the Attorney General of the United States guidance on this issue.

For the foregoing reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

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ATTORNEYS FOR APPELLANTS

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
AMERICUS DIVISION

REV. M.W. MERRITT, et al., Plaintiffs, vs. MADISON FAUST, et al., Defendants.	CIVIL ACTION NO. 76-28-Amer [Filed July 21, 1978]

Before HILL, Circuit Judge; BOOTLE, Senior District Judge; and OWENS, District Judge.

OWENS, District Judge:

On February 16, 1978, with the concurrence of the parties this court of three judges dissolved itself and in doing so inadvertantly failed to dispose of one issue that is required to be decided by a court of three judges. To consider and decide that issue the court hereby reconvenes itself.

An amendment to the Constitution of the State of Georgia adopted by the legislature in 1965 and approved by the

voters of the entire State of Georgia [sic; voters of Terrell County only] changed the Terrell County Board of Education from one whose members are elected by the grand jury to one whose members are publicly elected, and changed the Superintendent of Schools for Terrell County from an office that is publicly elected to an office that is selected by the publicly elected school board. 1965 Ga. Laws 746.

On October 17, 1977, following the commencement of this lawsuit on October 19, 1976, the defendants submitted the said constitutional amendment to the Attorney General of the United States requesting his approval pursuant to Section 5 of the Voting Rights Act. 42 U.S.C. § 1973(c).[1] On December 16, 1977, the Attorney General by letter objected to so much of this constitutional amendment as provides a method for electing the members of the school board.

The parties agree that this constitutional amendment is a change that is covered by the Voting Rights Act and that therefore may not be further utilized without the Attorney General of the United States having failed to object to the Act or without the Act having been approved by the United States District Court for the District of Columbia. They suggest however that the objection by the Attorney General to a limited portion of this constitutional amendment leaves the remainder of the constitutional amendment viable and usable for the purpose of continuing to elect this school board and permitting them to continue to select this superintendent of schools. They further suggest that this partial disapproval would permit this court to remedy the portion of the constitutional amendment to which the Attorney General objected. Similar contentions were made and considered by the Fifth Circuit Court of Appeals in Pitts v. Busbee, 511 F.2d 128 (1975), in which contrary to the position taken by these parties the Fifth Circuit held that an objection by the Attorney General to any portion of legislation covered by the Voting Rights Act constitutes an objection to the entire act and makes the entire act ineffective. Accordingly, the objection of the Attorney General to a portion of this constitutional amendment constituted an objection to the entire constitutional amendment and had

the effect under the Voting Rights Act of preventing that constitutional amendment in its entirety from ever becoming effective.

The Attorney General having objected to this constitutional amendment, the parties could have applied to the United States District Court for the District of Columbia for a declaratory judgment approving the amendment. They have not done so. Accordingly, the Voting Rights Act has not been complied with and this court must and does hereby enjoin any further usage by the defendants or any other persons of said constitutional amendment, 1965 Ga. Laws 746.

As a result of this injunction the now elected members of the Terrell County Board of Education of necessity will be selected as they were before said constitutional amendment--by the Grand Jury of the Superior Court of Terrell County pursuant to the Constitution of Georgia. Article VIII, Section V, Constitution of Georgia of 1976. The Superintendent of Schools as he was before said constitutional amendment, will be publicly elected. Article VIII, Sec. V, Constitution of Georgia of 1976. This transition requires

the court to fashion a method of changing from an elected to an appointed school board and from a selected to a publicly elected school superintendent. For that purpose the court does HEREBY ORDER:

(1) The present members of the Terrell County Board of Education and the present School Superintendent of Terrell County are each de facto public officers and shall continue to be de facto public officers until such time as their successors are selected and elected pursuant to this order. Hagood v. Hamrick, 223 Ga. 600, 157 S.E. 2d 429 (1967); Tarpley v. Carr, 204 Ga. 721, 51 S.E. 2d 638 (1949). As de facto officers they each have and continue to have all of the powers and prerogatives of their respective offices.

(2) Within sixty (60) days after this date the Grand Jury of the Superior Court of Terrell County, Georgia, pursuant to Article VIII, Section V, of the Constitution of Georgia of 1976 shall select five (5) citizens of Terrell County to constitute the Terrell County Board of Education. Those citizens shall take office at 12:00 o'clock noon on the first Monday of the first month following their selection to serve for a five (5) year term.

(3) A Superintendent of Schools for Terrell County shall be publicly elected at a special election to be held at the same time the general election is held in November, 1978. That election shall be conducted in accordance with the Election Code of the State of Georgia. 1933 Ga. Code Ann. §§34-807 and 34-1002. The Superintendent of Schools so elected shall be elected for a term of two (2) years to begin on the first day of January following the day of election and to expire on the first day of January following the election of his successor in the General Election of November 1980. See 1933 Ga. Code Ann. §32-1002.

No other issues remain to be decided by this court of three judges. Accordingly, the court does hereby dissolve itself and remands the entire remaining case to the originating judge.

SO ORDERED, this the 21st day of July, 1978.

s/JAMES C. HILL
JAMES C. HILL
United States Circuit Judge

s/W.A. BOOTLE
W.A. BOOTLE
Senior United States District Judge

s/WILBUR D. OWENS, JR.
WILBUR D. OWENS, JR.
United States
District Judge

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§1973c. Alteration of voting qualiications [sic] and procedures; action by state or political subdivision for declaratory judgment of no-denial or abridgement of voting rights; three-judge district court; appeal to Supreme Court.

Whenever a State or political subdivision. . .shall enact or seek to administer any voting qualification or prerequisite to voting, or standa d, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964. . . such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: Provided, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the Attorney General's failure to object nor a declaratory judgment entered this under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard

practice, or procedure. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court. (emphasis added).

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
AMERICUS DIVISION

LUCIUS HOLLOWAY, ET AL., Plaintiffs,	]	
v.	]	CIVIL ACTION NO. 76-28-AMER
MADISON FAUST, ETC., ET AL. Defendants.	]	[Filed August 21, 1978]

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Plaintiffs appeal from the Order entered by the district court in this action on July 21, 1978 which held that the objection, pursuant to 42 U.S.C. §1973, by the Attorney General of the United States to only the at-large election feature of Georgia Laws 1965, p. 746, nullified the enforceability of the Local Act in its entirety.

This appeal is taken pursuant to 42 U.S.C. §1973(c).

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that I have served foregoing Notice of Appeal to the Supreme Court of the United States upon Defendants by mailing a copy of the same, postage prepaid, to defendants' counsel of record:

W.L. Ferguson
Attorney at Law
Dalton [sic], Georgia 31742

James Collier
P.O. Box 577
Dalton [sic], Georgia 31742

Jefferson James Davis
132 State Judicial Bldg.
Atlanta, Georgia 30334

This 18th day of August, 1978.

s/Christopher Coates
Christopher Coates

42 U.S.C. §1973c

§1973c. Alteration of voting qualifications and procedures; action by state or political subdivision for declaratory judgment of no denial or abridgement of voting rights; three-judge district court, appeal to Supreme Court

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualifications or prerequisite to voting, or standard, practice, or procedure with

respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard,

practice, or procedure: Provided, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve

the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

TERRELL COUNTY BOARD OF EDUCATION
Proposed Amendment to the Constitution.
No. 79 (House Resolution No. 213-569).

A Resolution.

Proposing an amendment to the Constitution so as to provide for the election of members of the board of education of Terrell County by the people and for the election of the county school superintendent of Terrell County by the board of education of Terrell County; to provide for the submission of this amendment for ratification or objection; and for other purposes.

Be it resolved by the General Assembly of Georgia:

Section 1. Article VIII, Section V, Paragraph I of the Constitution, relating to county boards of education, is hereby amended by adding at the end thereof the following:

"The board of education of Terrell County shall be composed of two members from the county at large and one member each from each of the five education districts provided for hereinafter. All

members, however, shall be elected by the voters of the entire county. Any person, in order to be eligible for membership on the board, shall be registered and eligible to vote for members of the General Assembly from Terrell County, shall have resided in Terrell County for at least one year immediately preceding the date of the election and, with the exception of the members at large, shall have resided in the education district hereinafter designated from which he offers as a candidate for at least six months immediately preceding the date of the election. For the purpose of electing the members of the board of education of Terrell County from education districts, Terrell County is hereby divided into five education districts as follows:

"Education District No. 1 shall be composed of all that territory contained within Militia District No. 1750 (Graves), Milita District No. 1150 (Dover), and Militia District No. 1459 (New Eleventh).

"Education District No. 2 shall be composed of all that territory contained within Milita District No. 1673 (Sasser) and Milita District No. 909 (Herod).

"Education District No. 3 shall be composed of all that territory contained within Militia District No. 1143 (Brownwood).

"Education District No. 4 shall be composed of all that territory contained within Militia District No. 1470 (Parrott) and Militia District No. 811 (Twelth).

"Education District No. 5 shall be composed of all that territory contained in Militia District No. 1154 (Dawson).

"At the general election in November of 1968, the seven members of the board of education of Terrell County shall be elected for terms of office as hereinafter provided. One member shall be elected from each of the education districts hereinabove described and two members shall be elected from the county at large. The members elected from Education Districts Nos. 1, 2, and 3 shall be elected for terms of office of four years each and until their successors are elected and qualified. The members elected from Education Districts Nos. 4 and 5 and the two members elected from the county at large shall be elected for terms of office of two years each and until their

successors are elected and qualified. All such members shall take office on January 1, 1969. Thereafter, all members shall be elected for terms of office of four years each and until their successors are elected and qualified and shall be elected at the general election in the year of the expiration of their terms of office. All such members shall take office on the first day of January immediately following their election.

"In the event a vacancy occurs on the board for any reason other than expiration of term of office, the remaining members of the board shall elect a person from the district in which the vacancy occurs, except for the at large members who shall be elected from the entire county, and such person shall serve for the unexpired term. In the event a member moves his residence from the district he represents, or county, in case of an at large member, a vacancy shall exist on said board and shall be filled in the same manner as other vacancies are filled. At its first meeting each year, the members of the board shall elect one of their number to serve as chairman for that year and until the election of a chairman in the subsequent

year. A member shall be eligible to succeed himself as a member of the board and also as chairman of the board.

"The board of education in existence at the time of the ratification of this amendment shall continue in existence through December 31, 1968, and the terms of office of all members of such board shall expire at that time and such board of education shall stand abolished. The board created herein shall be the successor to such abolished board and such boards and the members thereof shall be subject to all constitutional and statutory provisions relative to county boards of education and to county board members unless such provisions are in conflict with the provisions of this amendment.

"The board of education created herein shall elect the county school superintendent, who shall serve at the pleasure of the board. The person elected as county school superintendent in 1964, or his successor, shall serve through December 31, 1968, and the board shall elect a superintendent who shall take office on January 1, 1969. The superintendent shall serve at the pleasure of

the Board. No election of a county school superintendent by the people shall be held in 1968. The county school superintendent shall be elected by the board subject to all constitutional and statutory provisions relative to county school superintendents unless such provisions are in conflict with the provisions of this amendment."

Section 2. When the above proposed amendment to the Constitution shall have been agreed to by two-thirds of the members elected to each of the two branches of the General Assembly, and the same has been entered on their journals with the "Ayes" and "Nays" taken thereon, such proposed amendment shall be published and submitted as provided in Article XIII, Section I, Paragraph I of the Constitution of Georgia of 1945, as amended.

The ballot submitting the above proposed amendment shall have written or printed thereon the following:

"YES ( ) Shall the Constitution be amended so as to provide for the election of members of the board of education of Terrell County by the people and for the election of the county school superintendent of Terrell County by the board of education of Terrell County?"

NO ( )

All persons desiring to vote in favor of ratifying the proposed amendment shall vote "Yes." All persons desiring to vote against ratifying the proposed amendment shall vote "No".

If such amendment shall be ratified as provided in said Paragraph of the Constitution, it shall become a part of the Constitution of this State. The returns of the election shall be made in like manner as returns for elections for members of the General Assembly, and it shall be the duty of the Secretary of State to ascertain the result and certify the result to the Governor, who shall issue his proclamation thereon.

Mr. W.L. Ferguson
Attorney for the Terrell
County Board of Education
Dawson, Georgia 31742

Dear Mr. Ferguson:

This is in reference to the changes affecting voting in Terrell County, Georgia resulting from the Local Amendment to Article VIII, Section 5, Paragraph II (Sec. 2-5302) of the Constitution of the State of Georgia, Georgia Laws, 1965 Session, page 746 ratified November 8, 1976, [sic; 1966] submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on October 17, 1977.

According to our analysis, this Local Amendment has resulted in the following new practices or procedures with respect to voting under the standards of Section 5:

1. The election rather than the appointment of the Board of Education for Terrell County;

2. The increase in the size of that Board from five members to seven members;

3. The method of election for that Board, including any practices or requirements of State law not previously followed or applied with respect to that Board;

4. The method of selecting the Chairman of the Board;

5. The method of filling vacancies on the Board; and

6. The appointment rather than the election of the County School Superintendent for Terrell County.

With respect to the changes indicated by numbers 1, 2, 4, 5, and 6, the Attorney General does not interpose any objection. However, we feel a responsibility to point out that Section 5 expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.

With respect to the method of election for the Board of Education, we have been unable to reach a similar result. It is our understanding that the seven members of the Board are elected at large in the County, that five members of the Board are required to reside in the five districts described in the Local Amendment, and that the terms of office for the

members of the Board are staggered. In addition, pursuant to Sec. 34-1015 of the Georgia Election Code the two positions not elected from districts are considered separate offices for electoral purposes, and, pursuant to Sec. 34-1513(a) of that Code a majority vote is required for nomination and election. We have examined this electoral system in view of circumstances in Terrell County that, under the legal principles by which we are guided, we must consider relevant. See Beer v. United States, 425 U.S. 130, 141 (1976); City of Richmond v. United States, 422 U.S. 358 (1975); White v. Regester, 412 U.S. 755 (1973); Allen v. State Board of Elections, 393 U.S. 544, 569 (1969); Kirksey v. Board of Commissioners of Hinds County, 554 F.2d 139 (5th Cir. 1977)(en banc), cert. denied, 46 U.S.L.W. 3357 (U.S. Nov. 18, 1977)(No. 77-499).

According to the information you have provided, information and comments from other interested persons, research conducted by our staff, and data contained in the 1970 census, the following circumstances in Terrell County appear to exist: The population of Terrell County is 11,416.

Blacks constitute 59.5 percent of the population. Residential patterns in the county are such that the creation of seven fairly-drawn single-member districts satisfying applicable legal requirements could be expected to result in some districts having a black majority in the population. No black has been elected to the Board of Education or to any other office in the County. Prior to 1966 blacks were not permitted to serve on the County Grand Jury, which prior to the adoption of this Local Amendment appointed members of the Board of Education; a court order was required to desegregate the Grand Jury. In 1967 Terrell County was designated by the Attorney General, pursuant to Section 6 of the Voting Rights Act, 42 U.S.C. 1973d, for the appointment of Federal Examiners. Public schools in Terrell County were not desegregated until the 1970-71 school year, and a court order was required for such desegregation. An analysis of precinct election returns for elections in which there were black candidates supports an inference that white voters in the County are generally reluctant to vote for black candidates. The voting changes resulting from the Local

Amendment have been enforced in violation of Section 5 of the Voting Rights Act.

In these circumstances, we are unable to conclude that the method of election for the Board of Education will not have a discriminatory effect. Accordingly, on behalf of the Attorney General, I must interpose an objection to the method of election of the Board of Education of Terrell County resulting from the adoption of the Local Amendment described in the first paragraph of this letter.

Of course, as provided by Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this method of election has neither the purpose nor the effect of denying or abridging the right to vote on account of race or color. In addition, pursuant to the Attorney General's Section 5 guidelines (28 CFR 51.21, 51.23, and 51.24), you may request that this objection be reconsidered. However, until such time as the objection may be withdrawn or a favorable judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the method of election for the

Board of Education of Terrell County legally unenforceable.

Because the present members of the Board of Education are holding office in violation of Section 5 of the Voting Rights Act, we request that you notify us within 30 days of your receipt of this letter of the steps the Board of Education plans to take to comply with this objection.

In addition, because the method of election of the Board of Education is the subject of litigation under the Voting Rights Act, Merritt v. Faust, C.A. No. 76-28-Amer. (M.D.Ga.), we are sending a copy of this letter to the Court and to counsel for the plaintiffs.

Finally, if you have any questions concerning the matters discussed in this letter, feel free to telephone Voting Section Attorney David H. Hunter, at 202/739-3849.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

cc:
United States District Court,
Middle District of Georgia,
Americus Division
Neil Bradley, Esquire

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-821

LUCIUS HOLLOWAY, SR. and LAWRENCE GREENE, individually and on behalf of all others similarly situated; and the TERRELL COUNTY VOTERS LEAGUE,
Appellants,

v.

BETTY E. WISE, individually and in her official capacity as Judge of the Probate Court for Terrell County; WALTER (W. L.) STALLWORTH, WES (WILL O.) WESTON, HUGH LEE, RONALD FERGUSON, and COLIN (COLDEN) RAINEY, individually and in their official capacities as members of the Terrell County Board of Education; and RICHARD C. BARRY, individually and in his official capacity as the Terrell County School Superintendent,
Appellees.

Appeal from a Three-Judge Court in the United States District Court for the Middle District of Georgia Americus Division

MOTION TO AFFIRM AND BRIEF ON APPELLEES' MOTION TO AFFIRM

W. L. FERGUSON
Post Office Box 82
Dawson, Georgia 31742
Attorney for Appellees

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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---

MOTION TO AFFIRM

Appellees, pursuant to Rule 16 (c) and (d) of the Rules of the Supreme Court of the United States, file this Motion to Affirm the Order entered on July 21, 1978, by the District Court, and contend:

1. That it is manifest that the question on which the decision of the cause depends is so unsubstantial as not to need further argument because under the decision of the United States Court of Appeals for the Fifth Circuit in *Pitts* v. *Busbee,* 511 F. 2d 126 (5th Cir. 1975) is controlling in the instant case.

2. That the question on which the decision of the case depends is now moot because the Order of the Three-Judge District Court dated July 21, 1978, has been activated and implemented in that: (a) the Grand Jury of the Superior Court of Terrell County, Georgia, was re-convened on September 5, 1978, and selected five (5) citizens of Terrell County to constitute the Terrell County Board of Education, who took office at 12 o'clock noon on the First Monday in October, 1978, and now constitute the de jure Terrell County Board of Education; and (b) that a special election to elect the Superintendent of Schools of Terrell County was held at the time of the general election on November 7, 1978, and such special election resulted in the election of a de jure School Superintendent of Terrell County, with the term of office to commence on January 1, 1979.

WHEREFORE, it is respectfully submitted that this Motion to Affirm be sustained, and that the Order of the Three-Judge Court dated July 21, 1978, be ordered to stand affirmed.

Respectfully submitted,

W. L. FERGUSON
Post Office Box 82
Dawson, Georgia 31742
Attorney for Appellees

INDEX

Page

MOTION TO AFFIRM i

TABLE OF AUTHORITIES iv

BRIEF ON APPELLEES' MOTION TO AFFIRM 1

STATEMENT OF THE CASE 1

ARGUMENT 6

I. Review is Not Required Because the Ruling of the District Court and the Decision in *Pitts* v. *Busbee,* 511 F. 2d 126 (5th Cir. 1975), Upon Which the District Court Relied, is Not in Conflict with the Ruling in *City of Petersburg, Virginia* v. *United States,* 354 F. Supp. 1021 (D. D. C. 1972) (Three-Judge Court), Aff'd, 410 U.S. 962 (1973) 6

II. The Congressional Purpose of the Voting Rights Act of 1965 is Not in Conflict with the Decision of the District Court Resulting from the Objection Made by the Attorney General 8

III. The Decision of the District Court Based Upon the Objection of the Attorney General Does Not Impose, at the Present Time, Any Disruption of Local Elections Under the Voting Rights Act of 1965, for the Reason that the Issue that Determines the Instant Case is now Moot 9

CONCLUSION 11

CASES: Page

Allen v. State Board of Elections, 393 U. S. 544, pp. 569-570 (1969), 22 L. Ed. 2d 1, 89 S. Ct. 817 ..... 4, 8

City of Petersburg, Virginia v. United States, 354 F. Supp. 1021 (D. D. C. 1972) (Three-Judge Court), Aff'd, 410 U. S. 962 (1973) 6, 7, 8

Georgia v. United States, 411 U. S. 526, 36 L. Ed. 2d 472, p. 483, 93 S. Ct. 1702 ..... 4, 8

Hagood v. Hamrick, 223 Ga. 600, 157 S. E. 2d 429 (1967) 10

Pitts v. Busbee, 511 F. 2d 126 (5th Cir. 1975)...ii, 6, 7, 8, 12

Tarpley v. Carr, 204 Ga. 721, 51 S. E. 2d 638 (1949)... 10

United States of America v. The State of Georgia, et. al., Civ. No. 76-1531A (N. D. Ga.) aff'd (June 5, 1978) No. 77-1376 6

CONSTITUTIONAL PROVISIONS:

Fifteenth Amendment 5

STATUTES:

Georgia Annotated Code Section 2-5302 2

Georgia Annotated Code Section 2-5305 2

Georgia Annotated Code Section 32-902 2

Georgia Annotated Code Section 32-902.1 2

Georgia Annotated Code Section 32-903 2

Georgia Annotated Code Section 32-907 4

Georgia Annotated Code Section 32-1002 2

Georgia Laws 1965, p. 746 .....2, 4, 5, 8, 9

42 U. S. C., Section 1973c (Section 5 of the Voting Rights Act of 1965) 2, 4, 8, 9, 11, 12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-821

LUCIUS HOLLOWAY, SR. and LAWRENCE GREENE, individually and on behalf of all others similarly situated; and the TERRELL COUNTY VOTERS LEAGUE,
Appellants,

v.

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Appellees.

Appeal from a Three-Judge Court in the United States District Court for the Middle District of Georgia Americus Division

BRIEF ON APPELLEES' MOTION TO AFFIRM

STATEMENT OF THE CASE

The 1945 Constitution of the State of Georgia provided:

(1) For the County Boards of Education to be composed of five (5) members selected by the Grand Jury of each County, and

(2) That the County School Superintendent of each County be elected by the voters concurrently with other County officers.

With the exception of a few changes that are not relevant to the instant case, these procedures were re-enacted in the 1976 Constitution of the State of Georgia.

(*Section 2-5302* and *Section 2-5305,* Georgia Annotated Code)

The general statutes as to the selection of the members of the Board of Education by the Grand Jury of each County is contained and set forth in *Sections 32-902* and *32-902.1* and *32-903* of the Georgia Annotated Code, and with the exception of the last sentence in *Code Section 32-903,* the remainder of the general statutes relating to the selection of the County Boards of Education were in force and effect prior to the effective date of the Voting Rights Act of 1965.

The County School Superintendent was elected by popular vote to serve for a term of four (4) years.

(*Section 32-1002,* Georgia Annotated Code)

These selection methods can only be changed by a Local Constitutional Amendment ratified by a referendum. A Local Constitutional Amendment was passed, which made a change for Terrell County under Georgia Laws 1965, p. 746, and which Local Amendment was submitted and approved at the General Election in November, 1968.

(Local Constitutional Amendment, Jurisdictional Statement, pp. 15a-21a)

The Local Constitutional Amendment resulted in certain changes as to Terrell County, consisting of:

(1) Membership of the Board of Education increased from five to seven members;

(2) That the Board of Education of Terrell County be composed of two members from the County at large, and one member from each of five specified Education Districts, making a total of seven Board members to be elected by the voters of the entire County, rather than to have five members appointed by the Grand Jury;

(3) That with the exception of the two members of the Board at large, that all others of the Board shall reside in the specified Education District, and that a system of staggered terms of office be in effect for all members of the Board;

(4) The members of the Board of Education to elect one of their number as the Chairman of the Board;

(5) A vacancy on the Board of Education, other than an expiration of the term of office, to be filled by the appointment by the remaining members of the Board, as opposed to appointment by the Grand Jury;

(6) That the Board of Education to be subject to all Constitutional and statutory provisions relative to County Boards of Education and to County Board members; and

(7) The Board of Education to elect the County School Superintendent, who serves at the pleasure of the Board, rather than to be elected by popular vote for a term of four years.

Appellants state that formerly the Chairman of the Board of Education was by appointment of the Grand

Jury. (Jurisdictional Statement, p. 7) This is not true, because formerly the Board of Education elected one of their number as President, to serve for the term for which he was chosen as a member of the Board of Education.

(*Section 32-907*, Georgia Annotated Code)

The Local Constitutional Act, (Georgia Laws 1965, p. 746) further provided that the Board of Education elect the County School Superintendent who would serve at the pleasure of the Board.

It is agreed that the election changes in Georgia Laws 1965, p. 746, were covered by Section 5 of the Voting Rights Act.[1] The Local Constitutional Amendment was voted upon and approved in a referendum in the General Election held in November, 1968, but the same was not submitted to the Attorney General of the United States as provided by Section 5 of the Voting Rights Act until July 28, 1977, even though the Amendment was put into effect on January 1, 1969. On December 16, 1977, Drew S. Days, III, Assistant Attorney General, Civil Division of the United States Department of Justice, in a signed letter objected only to that portion of the Local Constitutional Amendment, to wit:

> "3. The method of election for the Board, including any practices or requirements of State law not previously followed or applied with respect to that Board."

(Jurisdictional Statement, pp. 22a-27a)

On July 21, 1978, the Three-Judge District Court ruled that the objection to a portion of the Constitutional Amendment constituted an objection to the entire Constitutional Amendment, and had the effect, under the Voting Rights Act, of preventing the Constitutional Amendment, in its entirety, from ever becoming effective. The District Court stated that no application had been made to the United States District Court for the District of Columbia for a Declaratory Judgment to approve the Amendment, and held that the Voting Rights Act had not been complied with, and further enforcement and use of the Constitutional Amendment (1965 Georgia Laws, p. 746) was enjoined.

(Jurisdictional Statement, pp. 1a-8a)

Appellees did contend in the District Court that if the Court did decide that the Local Constitutional Amendment was not divisible, then the whole Constitutional Amendment unenforceable and had no legal validity. (Appellees' Brief, p. 6) Appellees did submit to the District Court that if the Court did allow numbered posts or districts that did not violate the Fifteenth Amendment to the Constitution of the United States, an election could be held to elect the Board of Education members to operate the schools and to ap-

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[1] The portion of Section 5 of the Voting Rights Act essentially freezes the election laws of the covered States unless a declaratory judgment is obtained in the District Court for the District of Columbia holding that the proposed change is without discriminatory purpose or effect. The alternative procedure of submission to the Attorney General of the United States merely affords and gives a rapid method of rendering a new election law enforceable. *Georgia* v. *United States*, 411 U.S. 526, 36 L Ed 2d 472, 483, 93 S. Ct. 1702 (1973). Also, see *Allen* v. *State Board of Elections*, 393 U.S. 544, pp. 569-570 (1969), 22 L Ed 2d 1, 89 S. Ct. 817. The Constitutional Amendment was utilized without first having the approval of the Attorney General of the United States or without having been approved by the United District Court for the District of Columbia.

point a County School Superintendent. This position of the Appellees was suggested because of:

(1) The designated post requirement, and

(2) The majority vote position has been ruled upon in the case of the *United States of America* v. *The State of Georgia, et al.* in the United States District Court for the Northern District of Georgia, Atlanta Division, Civil Action No. C76-1531A. The Supreme Court of the United States, on June 5, 1978, affirmed this case from the Northern District of Georgia, Atlanta Division, being No. 77-1376.

(Reply Brief of Appellees, pp. 5-6)

ARGUMENT

THE QUESTION IS NOT SUBSTANTIAL

I. Review Is Not Required Because the Ruling of the District Court and the Decision in *Pitts* v. *Busbee*, 511 F 2d 126 (5th Cir. 1975), Upon Which the District Court Relied, Is Not in Conflict With the Ruling in *City of Petersburg, Virginia* v. *United States*, 354 F. Supp. 1021 (D.D.C. 1972) (Three-Judge Court), Aff'd. 410 U.S. 962 (1973).

The instant case relates to a County Board of Education, and the *Pitts* case relates to a Board of County Commissioners. The principle is identical in that in the *Pitts* case it was held by the Court that the objection by the Attorney General to one part of the statute rendered the whole statute unenforceable. In the instant case, the Attorney General objected to the method of election of the members of the Board of Education. The Board of Education in the instant case constituted the *foundation* of the entire Constitutional Amendment because without there being a de jure Board of Education, there could not be:

(1) Any persons who could operate and manage the public schools, and

(2) A method for the election of a de jure County School Superintendent.

The instant Constitutional Amendment was not divisible so that the parts of the Amendment that were not objected to by the Attorney General could still be viable for the reason that the *foundation* of the entire Constitutional Amendment is dependent upon there being a lawful Board of Education to act and carry out all of the parts of the Act which were not objected to. This is similar to the situation where the second floor of a building can not stand where the first floor is removed and taken from under the second floor.

The case of the *City of Petersburg, Virginia* is not the same as the instant case either as to the facts or as to the legal principles for the reason that this case was where there was an annexation of an area which contained approximately an additional 7,000 white persons that would eliminate a black population majority, and that the City of Petersburg, Virginia did not carry the burden of showing that such a change eliminating a black population majority, while retaining at large election for City Councilmen, did not have the purpose or the effect of denying or abridging the right to vote on account of race or color. Thus, it can be very clear that the case of the *City of Petersburg, Virginia* is definitely not in conflict with the *Pitts* case, nor is it in conflict with the instant case as decided by the District Court. The Court in the case of the *City of Petersburg, Virginia* suggested that there be made a shift from the at large method of election to a ward system of election of the City Councilmen, but this was only a suggestion

which had been made by the Attorney General. There is nothing in the case of the *City of Petersburg, Virginia* in conflict with either the *Pitts* case or the ruling by the District Court in the instant case.

II. The Congressional Purpose of the Voting Rights Act of 1965 Is Not in Conflict With the Decision of the District Court Resulting From the Objection Made by the Attorney General.

Section 5 of the Voting Rights Act essentially freezes the election laws unless a Declaratory Judgment is obtained in the District Court for the District of Columbia, holding that a proposed change is without discriminatory purpose or effect. The alternative procedure of submission to the Attorney General gives a rapid method of rendering a new election law enforceable.

(Georgia v. United States, 411 U. S. 526, 36 L Ed 2d 472, p. 483, 93 S. Ct. 1702; also, *Allen* v. *Board of Elections,* 393 U. S. 544, 22 L Ed 2d 1, 89 S. Ct. 817)

In the instant case in regards to the Local Constitutional Amendment, the Attorney General objected to that portion of Georgia Laws 1965, p. 746 relating to the method of election of the Board of Education. (Jurisdictional Statement, pp. 22a-27a) The objection was based upon the fact that the Attorney General was unable to conclude that the method of election for the Board of Education will not have a discriminatory effect. The objection of the Attorney General was to make the method of election for the Board of Education of Terrell County legally unenforceable. The Board of Education is the foundation of the entire Act, and if there can not be a legal Board of Education that can operate as a de jure Board, then the entire Local Constitutional Act is not divisible and the whole Act is a nullity in its entirety. The other portions of Georgia Laws 1965, p. 746, that were not objected to would have no foundation upon which to stand and to be legally enforceable because the entire Act itself derived its viability from there being a legally enforceable Board of Education.

The cases holding that State and Local laws be amended to devise a ward system for Councilmanic elections have nothing *whatsoever* in common with the instant case. The portions of the Act which the Attorney General found no objections to can not have any life of any kind because of the absolute necessity of being dependent upon a legally enforceable Board of Education for Terrell County.

III. The Decision of the District Court Based Upon the Objection of the Attorney General Does Not Impose, at the Present Time, Any Disruption of Local Elections Under the Voting Rights Act of 1965, for the Reason That the Issue That Determines the Instant Case Is Now Moot.

The Order of the Three-Judge District Court, dated July 21, 1978, has been activated and implemented in that:

(1) The Grand Jury of the Superior Court of Terrell County, Georgia, was re-convened on September 5, 1978, and selected five (5) citizens of Terrell County to constitute the Terrell County Board of Education, who took office at 12 o'clock noon, on the First Monday in October, 1978, and now constitute the de jure Terrell County Board of Education; and

(2) A special election to elect the Superintendent of Schools of Terrell County was held at the time of the General Election on November 7, 1978, and such spe-

cial election resulted in the election of the de jure School Superintendent of Terrell County, with the term of office to commence on January 1, 1979.

The de jure Terrell County Board of Education who took office at 12 o'clock noon, on the First Monday in October, 1978, consists of five (5) members, to wit:

(1) W. L. Stallworth (black)

(2) Will O. Weston (black)

(3) Hugh Lee (white)

(4) Colden Rainey (white), and

(5) Ronald Ferguson (white).

Richard C. Barry (white) was elected the Superintendent of Schools of Terrell County in the special election that was held at the time of the General Election on November 7, 1978, with the term of office to commence on January 1, 1979.

The previous members of the Terrell County Board of Education and the School Superintendent of Terrell County were each de facto public officers according to the Order of the District Court dated July 21, 1978, but at the present time, they are now de jure public officers.

(Jurisdictional Statement, pp. 5a-6a). (Also, *Hagood* v. *Hamrick,* 223 Ga. 600, 157 S. E. 2d 429 (1967), and *Tarpley* v. *Carr,* 204 Ga. 721, 51 S. E. 2d 638 (1949).

There would be a far more serious disruption of the public schools of Terrell County for the Court to now reverse the District Court, and order the appointment of the present new Board of Education and the election of the new County School Superintendent to be

null and void and of no validity, and that the District Court be required to allow the previous seven (7) members of the Board of Education and the previous County School Superintendent to be reinstated as the de jure officers upon condition of the Court creating a single-member District plan for use in the election of members of the Board of Education so as to cure the objection of the Attorney General which is what is desired by the Appellants.

There would be nothing to be more disrupting than for the Court to now reverse the District Court when the Order of the District Court dated July 21, 1978, has been activated and implemented. The question on which the decision of the case now depends is moot for the above reasons. It is difficult to imagine the enormous disruption that would result in the public schools of Terrell County if the Court were to reverse the Order of the District Court that the present members of the Board of Education of Terrell County and the present County School Superintendent for Terrell County who are in office under the laws of the State of Georgia that were in effect prior to the effective date of the Voting Rights Act of 1965. There could be no complaint as to this present method of appointment of the members of the Board of Education and the present election of the County School Superintendent.

CONCLUSION

It is submitted that the Motion to Affirm be sustained and that the Order of the Three-Judge Court dated July 21, 1978, be ordered to stand affirmed for the reasons of:

(1) That it is manifest that the question on which the decision of the cause depends is so unsubstantial as not

to need further argument, the same having been decided in the decision of *Pitts* v. *Busbee,* 511 F 2d 126 (5th Cir. 1975);

(2) The Voting Rights Act of 1965 does not conflict with the decision of the District Court resulting from the objection made by the Attorney General to the Local Constitutional Amendment; and,

(3) That the question on which the decision of the case depends is now moot because the Order of the Three-Judge District Court dated July 21, 1978, has been activated and implemented.

Respectfully submitted,

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